

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA,

v.

TIMOTHY R McCOOL,  
Defendant.

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INFORMATION

The United States Attorney charges that at all times material to this Information:

COUNT ONE

Conspiracy to Submit False Statements to Auditors and  
Falsify Books and Records  
Title 18, United States Code, Section 371

INTRODUCTION

1. adidas America (“adidas”) was a Delaware corporation headquartered in Beaverton, Oregon that sold, among other things, athletic footwear and apparel both directly and through retail stores. adidas is a wholly-owned subsidiary of adidas Salomon, A.G., a German corporation.

2. Defendant **TIMOTHY R. McCOOL** was the Director of Sales for adidas, responsible for attaining adidas’ sales goals throughout the United States as well as setting sales and marketing strategies with various national retailers such as Just for Feet.

3. Just for Feet (“JFF”) was a publicly traded corporation with its headquarters in Shelby County, Alabama. JFF was founded in 1977 with a single store in Birmingham,

Alabama. By 1999 it had grown to be the second largest athletic shoe retailer in the United States with locations in thirty states and annual sales of approximately \$775 million. At all times relevant to this Information, JFF's stock was traded on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") under the symbol "FEET."

4. JFF was an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("the Act"). To sell securities to members of the public and maintain public trading of its securities in the United States, JFF was required to comply with the provisions of the federal securities laws, including Section 13(a) of the Act (Title 15, United States Code, Sections 78m(a) and 78o(d)) and the regulations promulgated thereunder, that were designed to ensure that the company's financial information was accurately recorded and disclosed to the public.

5. Under provisions of the federal securities laws and the provisions promulgated thereunder, JFF was required to, among other things (a) file with the United States Securities and Exchange Commission ("SEC") annual financial statements audited by an independent accountant; (b) file with the SEC quarterly updates of its financial statements that disclosed its financial condition and the results of its business operations for each three-month period; (c) make and keep books, records, and accounts that accurately and fairly reflected the transactions and dispositions of the company's assets; and (d) devise and maintain a system of internal accounting controls sufficient to provide – (i) reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and other criteria applicable to such statements and to maintain the accountability of assets; and (ii) reasonable assurances



that the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

6. Deloitte & Touche, LLP was the independent accounting firm retained by JFF to, among other things, audit JFF's quarterly and annual financial statements.

7. Beginning in 1994, when JFF issued its initial public offering, it filed quarterly reports, called Forms 10-Q, and annual reports, called Forms 10-K, with the SEC at its headquarters located in Washington, D.C.

#### **CERTAIN RELEVANT ACCOUNTING PRINCIPLES AND PRACTICES**

8. Public companies, such as JFF, typically report the financial results of their operations in financial statements that include both an Income Statement and a Balance Sheet. A company's Income Statement reports, among other things, revenue recognized, expenses incurred, and income earned during a stated period of time – usually for a fiscal quarter or fiscal year. Within an Income Statement, expenses are generally subtracted from revenues to calculate net income. A company's Balance Sheet reports, among other things, the assets and liabilities of a company at a given point in time, usually at the end of a fiscal quarter or the end of a fiscal year.

9. Beginning in or around February 1999 and continuing through on or about April 23, 1999, Deloitte & Touche performed its annual audit of JFF's financial statements for the fiscal year ending ("FYE") January 30, 1999.

10. As part of the audit process involving JFF's accounts receivable, Deloitte & Touche requested certain vendors to provide written, independent confirmation of the amounts they owed JFF. This was done in the form of an "audit confirmation letter" which, using



language approved by Deloitte & Touche, was sent from JFF to the various vendors and requested that, in connection with the audit of JFF's financial statements, the respective vendor verify whether the amount set forth in the letter was the amount actually owed to JFF as of January 30, 1999. The vendor further was requested to send the signed audit confirmation letter directly to Deloitte & Touche.

### **CERTAIN RELEVANT INDUSTRY PRACTICES**

11. It was common practice in the athletic footwear industry for a vendor, such as adidas, to provide retailers, such as JFF, with money which the retailer would use to offset the costs of marketing and advertising the vendor's products. adidas referred to this money as "market development funds" or "MDF." JFF referred to such funds generally as "co-op." Under the guidelines established by adidas for the disbursement of MDF funds, retailers, such as JFF, had to submit invoices and supporting documentation to adidas in order to demonstrate that it had incurred expenses in connection with the advertising or sale of adidas products. Once adidas had approved an MDF request, it typically issued a credit memo to the retailer in an amount equal to the approved MDF request. These funds then were applied by the retailer against outstanding invoices from adidas.

12. In or around November 1997 senior officers of JFF met with senior officers of adidas, including defendant **McCOOL**, to discuss projected sales and marketing strategies for the upcoming year. Among the topics discussed was how much MDF money adidas would provide to JFF in 1998 and the guidelines by which JFF would be able to obtain those funds.

13. For the year 1998 adidas budgeted approximately \$407,000 in MDF to JFF and its subsidiaries.



14. In or around November 1998 senior officers of JFF met with senior officers of adidas, including defendant **McCOOL**, to discuss projected sales and marketing strategies for the upcoming year.

**JFF FRAUDULENTLY RECORDS CREDIT ALLEGEDLY DUE FROM ADIDAS AS  
INCOME FOR FYE 1998**

15. By on or about March 15, 1999, prior to the conclusion of the year-end audit for JFF's FYE January 30, 1999, an Executive Vice-President at JFF ("the JFF-EVP") had caused JFF's accounting department to record a total of approximately \$2,270,769 in accounts receivable allegedly due to JFF from adidas as of January 30, 1999. The \$2,270,769 in recorded receivables allegedly represented credits that adidas owed JFF as of January 30, 1999. In addition, the JFF-EVP caused a total of five invoices, which were made out to adidas for various amounts totaling \$2,270,769, to be prepared and entered into the books and records of JFF as of January 30, 1999. As a result, JFF overstated its income for FYE January 30, 1999 by approximately \$2,270,769.

16. As of January 30, 1999, adidas owed JFF no more than approximately \$40,000 in MDF funds, and owed JFF no co-op funds.

**THE CONSPIRACY**

17. Beginning on or about March 16, 1999 and continuing until on or about April 23, 1999, within the Northern District of Alabama and elsewhere, the defendant, **TIMOTHY R. McCOOL**, the JFF-EVP, and others, knowingly conspired and agreed with each other, to commit offenses against the United States, to wit:



(1) to knowingly and willfully make and cause to be made materially false and misleading statements to Deloitte & Touche in connection with the audit of JFF's financial statements and the preparation of an annual report required to be filed with the SEC for the year ending January 30, 1999, in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff; Title 17, Code of Federal Regulations, Sections 240.13b2-2; and

(2) to knowingly and willfully falsify and cause to be falsified the books, records and financial statements of JFF in violation of Title 15, United States Code, Sections 78m(b) (2) (A) & (B), 78m(b) (5) and 78ff and Title 17, Code of Federal Regulations, Section 240.13b2-1.

#### **PURPOSE OF THE CONSPIRACY**

18. The purpose of the conspiracy was for the defendant, **TIMOTHY R. McCOOL**, the JFF-EVP, and others to submit false and fraudulent information to Deloitte & Touche, namely that approximately \$2,270,769 in accounts receivable that had been fraudulently placed and caused to be placed on the books and records of JFF by the JFF-EVP, in fact, represented credits due from adidas to JFF, thereby defrauding the shareholders of JFF by artificially inflating JFF's earnings as reported in its annual financial statement.

#### **THE MANNER AND MEANS OF THE CONSPIRACY**

The manner and means by which the defendant and others sought to accomplish the conspiracy included, among other things, the following:

19. It was part of the conspiracy that the JFF-EVP signed and caused to be sent to defendant **McCOOL**, an audit confirmation letter, requesting defendant **McCOOL**, on behalf of



adidas, to confirm to Deloitte & Touche that adidas owed JFF credits in various amounts totaling \$2,270,769 "for advertising that ran or merchandise sold prior to January 30, 1999."

21. It was further part of the conspiracy that defendant **McCOOL**, knowing that the information contained in the audit confirmation letter was false, signed it and caused it to be sent by facsimile directly to Deloitte & Touche.

### OVERT ACTS

22. On or about March 16, 1999, the JFF-EVP telephoned defendant **McCOOL** informing him that he would be receiving an audit confirmation letter which he should sign and return to Deloitte & Touche.

23. On or about March 18, 1999, the JFF-EVP caused an audit confirmation letter to be sent by facsimile from JFF in Birmingham, Alabama to defendant **McCOOL** at adidas' headquarters in Beaverton, Oregon.

24. On or about April 16, 1999, the JFF-EVP caused a revised audit confirmation letter to be sent by facsimile from JFF in Birmingham, Alabama to defendant **McCOOL** at adidas' headquarters in Beaverton, Oregon. The audit confirmation letter was signed by the JFF-EVP, addressed to defendant **McCOOL**, and requested that defendant **McCOOL** confirm directly to Deloitte & Touche that adidas owed JFF credits in various amounts which totaled approximately \$2,270,769.

25. On or about April 20, 1999, the JFF-EVP in Birmingham, Alabama telephoned defendant **McCOOL** in Beaverton, Oregon and requested that he sign the audit confirmation letter and return it to Deloitte & Touche as soon as possible.

26. On or about April 20, 1999, defendant **McCOOL** signed the audit confirmation letter which falsely stated that adidas owed JFF credits totaling approximately \$2,270,769.

27. On or about April 20, 1999, defendant **McCOOL** caused this false audit confirmation letter to be sent by facsimile from adidas headquarters in Beaverton, Oregon to the Deloitte & Touche office in Atlanta, Georgia. From the Deloitte & Touche offices in Atlanta, Georgia, the audit confirmation letter was automatically sent via "right fax" e-mail to the Deloitte & Touche auditors in Birmingham Alabama.

28. On or about April 20, 1999, defendant **McCOOL** caused a document labeled "DISCLAIMER" to be written. The DISCLAIMER was addressed to the JFF-EVP and referenced an attached copy of the audit confirmation letter which defendant **McCOOL** had caused to be faxed to Deloitte & Touche that day. Defendant **McCOOL** stated in the DISCLAIMER that, in effect, his confirmation would become void in the event that JFF actually attempted to collect the amount of the credit allegedly due JFF from adidas, based solely on his confirmation letter. Defendant **McCOOL** signed and dated the DISCLAIMER and caused it to be sent by facsimile from adidas' headquarters in Beaverton, Oregon to the JFF-EVP in Birmingham, Alabama.

All in violation of Title 18, United States Code, Section 371.



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AUSA: CAROLYN W. STEVERSON

UNITED STATES

v.

TIMOTHY R. McCOOL

Count 1

18 U.S.C. § 371

Fine of NMT \$250,000 or imprisonment of NMT 5 year(s) or both on each count

SRT of NMT 3 years

Assessment Fee: \$100 each count

Restitution does apply

Guidelines do apply



AUSA: CAROLYN W. STEVERSON

UNITED STATES

v.

TIMOTHY R. McCOOL

ESTIMATED TRIAL TIME

The government's estimate of trial time, including jury selection, testimony, argument and charge is 4 days.

AUSA: CAROLYN W. STEVERSON

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TIMOTHY R. McCOOL

ESTIMATED TRIAL TIME

The government's estimate of trial time, including jury selection, testimony, argument and charge is 4 days.



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